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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

9 RICHARD GEORGE, No. C 07-04673 MHP

10 Plaintiff,

11 v.

12 UNITED STATES OF AMERICA,

13 Defendant.

14 /

MEMORANDUM & ORDER

Re: Motion to Dismiss

15 On September 7, 2007 plaintiff filed a complaint in the Superior Court of California in the
16 County of San Mateo alleging that the Internal Revenue Service (“IRS”) violated certain provisions
17 of the Internal Revenue Code (“IRC”). On September 11, 2007 defendant removed the action to this
18 court. Now before the court is defendant’s motion to dismiss. The court has considered the parties’
19 arguments fully, and for the reasons set forth below, the court rules as follows.

20

21 **BACKGROUND**

22 This action concerns plaintiff’s tax filings for the years 1997–1999. In 1999 the IRS notified
23 plaintiff of deficiencies in his 1997 tax return. See Complaint ¶ 10. In May 2001 the IRS notified
24 plaintiff of deficiencies in his 1998 and 1999 tax returns. Id., ¶ 13. Plaintiff apparently failed to
25 remit payment for any of his tax liabilities. Thus, in or around 2004 IRS Agent Jane Allen sent
26 plaintiff a letter notifying him of potential collection actions that would be taken in the event he
27 failed to satisfy his tax liabilities. See Allen Dec. ¶ 3. Such actions included federal tax liens and/or
28 issuance of levies on his bank accounts and accounts receivable. Id. When plaintiff failed to agree

1 to meet with Agent Allen to resolve his tax debts, the government filed a notice of Federal Tax Lien
2 against plaintiff for \$254,556 for tax years 1997–1999. See Complaint ¶ 17. In 2004 and 2005 the
3 government levied upon several of plaintiff's properties in order to satisfy his tax liabilities. Id.,
4 ¶ 38.

5 Plaintiff now claims that the government violated several provisions of the IRC in
6 connection with its collection proceedings against plaintiff. First, plaintiff alleges that the
7 government violated 26 U.S.C. sections 6212 and 6213 by failing to provide him with a notice of
8 deficiency before assessing his 1998–1999 tax liability. Complaint ¶ 15. Second, he argues that the
9 government violated 26 U.S.C. section 6320 by failing to provide notice and opportunity for a
10 hearing upon filing a Notice of Federal Tax Lien on March 25, 2004. Id., ¶¶ 17, 52. Third, he
11 argues that the government violated 26 U.S.C. section 6330 by failing to provide notices and
12 opportunities upon filing several notices of levies in 2004 and 2005. Id., ¶¶ 38–39, 53. Fourth, he
13 alleges that the government violated 26 U.S.C. section 6331 by extending a levy beyond the property
14 possessed and obligations existing at the time the levy was issued. Id., ¶¶ 27–33, 54. Fifth, he
15 alleges that the government violated 26 U.S.C. section 6325 because it has not released liens that
16 plaintiff claims have been fully satisfied. Id., ¶¶ 42–43, 55. Sixth, he alleges that the government
17 violated 26 U.S.C. section 6103 by disclosing his tax return information to the California Franchise
18 Tax Board. Id., ¶¶ 16, 56. Seventh, he argues that the government violated 26 U.S.C. section 7804
19 by failing to obtain the required approval signatures on a July 26, 2004 Notice of Levy. Id., ¶¶
20 27–30, 57.

21 Plaintiff attempts to bring all of these claims under 26 U.S.C. section 7433, which provides
22 that “[i]f, in connection with any collection of Federal tax with respect to a taxpayer, any officer or
23 employee of the Internal Revenue Service recklessly or intentionally, or by reason of negligence
24 disregards any provision of this title, or any regulation promulgated under this title, such taxpayer
25 may bring a civil action for damages against the United States in a district court of the United
26 States.”

27 Many of the claims plaintiff asserts in this action were also brought against the IRS or Agent
28 Allen in an action plaintiff filed in 2005. Specifically, plaintiff asserted essentially identical

1 violations of sections 7804, 6212, 6213, 6320, 6330, and 6331. Each of those claims was dismissed
2 for failure to state a claim upon which relief can be granted. See George v. Internal Revenue
3 Service, et al., No. C 05-00955 MJJ, Docket No. 64 (N.D. Cal. Aug. 10, 2005) (Jenkins, J.).
4

5 DISCUSSION

6 Res judicata, or claim preclusion as it is commonly known, bars relitigation in a subsequent
7 action of any claims that were or could have been raised in an earlier action. Federated Dep't Stores,
8 Inc. v. Motie, 452 U.S. 394, 398 (1981). Res judicata has three requirements. First, there must be
9 an identity of claims, but the claims need not be identical. See Owens v. Kaiser Foundation Health
10 Plan, Inc., 244 F.3d 708, 713–714 (9th Cir. 2001). “The central criterion in determining whether
11 there is an identity of claims between the first and second adjudications is whether the two suits arise
12 out of the same transactional nucleus of facts.” Id. at 714 (internal quotations omitted). Second, the
13 previous action must have resulted in a final judgment on the merits. Id. at 713. Third, there must
14 be identity or privity between the parties. Id.

15 Here, plaintiff brings claims against the United States for violations of, *inter alia*, 26 U.S.C.
16 sections 6312, 6313, 6320, 6330, 6331 and 7804. In 2005 plaintiff brought an action against the IRS
17 claiming the exact same violations with the same factual bases, thereby meeting prong one above.
18 Second, each of these allegations was dismissed on the merits. See George v. Internal Revenue
19 Service, et al., No. C 05-00955 MJJ, Docket No. 64 (10 Cal. Aug. 10, 2005) (Jenkins, J.) (granting
20 motion to dismiss for failure to state claims upon which relief can be granted). Third, the IRS and
21 the United States of America are in privity and therefore res judicata applies. See Sunshine
22 Anthracite Coal Co. v. Adkins, 310 U.S. 381, 402 (1940) (“A government and its officers are in
23 privity for purposes of res judicata.”).

24 Plaintiff also brings claims against the government for violations of 26 U.S.C. sections 6103
25 and 6325. Although plaintiff did not assert these claims in the previous action, they are nevertheless
26 barred by res judicata because they arise out of the same transactional nucleus of facts as the other
27 claims. Like the claims that plaintiff previously asserted in 2005, these two claims arise out of the
28 IRS’s collection actions in connection with plaintiff’s tax deficiencies for the years 1997-1999.

1 Because res judicata bars claims that “could have been asserted, whether they were or not, in a prior
2 suit between the same parties,” these claims are barred. Owens, 244 F.3d at 714 (internal quotations
3 omitted).

4 In sum, plaintiff’s claims for violations of 26 U.S.C. sections 6103, 6212, 6213, 6320, 6325,
5 6330, 6331 and 7804 are barred by res judicata and are DISMISSED.

6

7 **CONCLUSION**

8 For the foregoing reasons, defendant’s motion to dismiss is GRANTED.

9

10 IT IS SO ORDERED.

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12 Dated: 4/17/2008



13 MARILYN HALL PATEL
14 United States District Court Judge
15 Northern District of California
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